IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WA.No. 527 of 2002()

AGAINST THE JUDGEMENT/ORDER IN OP.22433/1997
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APPELLANTS:
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1. E.SATHIARAJAN, S/O.IGNATIUS,RESIDING AT VELLIMADU KUNNU, POST MRIKUNNU, KOZHIKODE-12.

2. V.S.KURIAKOSE, S/O.KURIAN SCARIA, VAZHACHIRA, KUZHIMATTOM P.O., KOTTAYAM.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS:
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1. STATE OF KERALA, REP. BY ITS CHIEF SECRETARY TO GOVERNMENT OF KERALA, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER AND SECRETARY TO GOVERNMENT, HEALTH AND FAMILY WELFARE DEPARTMENT, THIRUVANANTHAPURAM.

3. COMMISSIONER AND SECRETARY TO GOVERNMENT GENERAL ADMINISTRATION(RULES) DEPARTMENT, THIRUVANANTHAPURAM.

4. THE DIRECTOR, DIRECTORATE OF INDIAN SYSTEMS OF MEDICINE, THIRUVANANTHAPURAM.

5. THE ADMINISTRATIVE OFFICER, DIRECTORATE OF INDIAN SYSTEMS OF MEDICINE, THIRUVANANTHAPURAM.

6. S.AMBIKADEVI, HEALD CLERK,
DIRECTORATE OF ISM, M.G.ROAD, AYURVEDA COLLEGE
BUILDING(JN), THIRUVANANTHAPURAM.

7. K.K.VIJAYAN, HEAD CLERK, GOVERNMENT
AYURVEDA MENTAL HOSPITAL, KOTTAKKAL,
MALAPPURAM DISTRICT.

ADDL.8. K.R.JALAJA, HEAD CLERK,
GOVERNMENT AYURVEDA MENTAL HOSPITAL, MALAPPURAM.

ADDL.9. N.SARASCHANDRA BABU, HEAD CLERK,
GOVERNMENT OFFICE OF THE DISTRICT MEDICAL OFFICER
(ISM), KOTTAYAM.
(ADDL. R8 & R9 ARE IMPLEADED AS PER ORDER IN
CMP.NOS.375/98 & 5597/98 DATED 3/2/1998 &
17/2/1998 RESPECTIVELY)

ADDL. R10 TO R22:
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10. T.K.OMANA, HEAD CLERK,DISTRICT MEDICAL OFFICE
(ISM), ERNAKULAM.

11. M.R.SUDEVAN, HEAD CLERK,
DIRECTORATE OF INDIAN SYSTEMS OF MEDICINE,
THIRUVANANTHAPURAM.

12. OSCAR A LOPEZ, HEAD CLERK,
DISTRICT MEDICAL OFFICE(ISM),
THIRUVANANTHAPURAM.

13. N.MOHANKUMAR, HEAD CLERK, KERALA HEALTH
RESEARCH AND WELFARE SOCIETY, THIRUVANANTHAPURAM.

14. S.MOHANAKUMAR, HEAD CLERK,
DISTRICT MEDICAL OFFICE (ISM), KASARAGOD.

15. M.V.BALARAMAN, HEAD CLERK,
DISTRICT MEDICAL OFFICE(ISM) KASARAGOD.

16. TA EUGENE, HEAD CLERK, DISTRICT MEDICAL
OFFICE (ISM) WAYANADU.

17. U.P.VALSALAN, UD CLERK, DIRECTORATE OF
INDIAN SYSTEMS OF MEDICINE (NORTH AUDIT),
THIRUVANANTHAPURAM.

18. K.K.RAMACHANDRAN, UD CLERK,
DISTRICT MEDICAL OFFICE (ISM), KOTTAYAM.

**19. A.K.SHEELAKUMARY, U.D.CLERK
DISTRICT MEDICAL OFFICE (ISM) KOLLAM.**

**20. K.BHAMA BAI, U.D.CLERK,
DISTRICT MEDICAL OFFICE (ISM) KANNUR.**

**21. J.EMMANUEL, UD CLERK, DIRECTORATE(ISM),
THIRUVANANTHAPURAM.**

**22. V.SHAHADEVAN, UD CLERK, DIST. MEDICAL
OFFICE (ISM), ALAPPUZHA.**

**BY GOVERNMENT PLEADER SRI.BENNY GERVASIS
SRI.KRB.KAIMAL FOR ADDL.R8 & R9**

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & ANTONY DOMINIC, JJ.
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W.A. NO. 527 OF 2002
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Dated this the 2nd day of July, 2007

J U D G M E N T

Radhakrishnan, J.

Learned Single Judge dismissed the original petition having noticed that they are not qualified on the date of occurrence of the vacancy on 16.9.1985. There is nothing to show that petitioners were qualified on that date. Learned Single Judge rightly held that they cannot claim benefit of Rule 28(bbb) so long as test qualified junior hands were awaiting promotion against the vacancies occurred prior to the declaration of the result. Hence the writ appeal lacks merits. Dismissed.

The point is also covered by Full Bench decision in **James Thomas & others v. Chief Justice, High Court of Kerala and others (1977 KLT 622)** and Division Bench in **Upendranath v. Mabel Franco (2006(4) KLT S.N.Page 70 Case No.95)**.

K.S.RADHAKRISHNAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp